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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

STEVEN V. BLASER et al.,

Plaintiffs and Respondents,

v.

CALIFORNIA STATE TEACHERS'
RETIREMENT SYSTEM,

Defendant and Appellant.

H045727

(Monterey County
Super. Ct. No. 16CV000328)

In the underlying administrative mandamus proceeding filed in February 2016, 31 retired high school teachers (Teachers)¹ contested attempts by California State Teachers' Retirement System (CalSTRS) to recoup retirement benefit overpayments that had resulted from a years-long miscalculation of Teachers' (and other high school

¹ Teachers, respondents in the instant appeal, are Steven V. Blaser, Diane S. Butler, Kathey Felt, Prudencia O. Garnica, Margaret J. Greco, Carol S. Hammons, Evelyn C. Hansen, Vera L. Heaston, Corren Hileman, Susan R. Hunter, Ann Jaramillo, Vickie Lauderbach, Linda M. Mayr, Paul W. McCarroll, Ted J. Meyenberg, Colleen A. Neary-Bettiga, Linda H. Perkins, Spiro Pettas, Thomas Aubrey Price, David G. Raptis, Sharon L. Seagraves, Jeffrey Sweet, Barbara Thornbury, Rheta V. Thure, Mary Ann Traylor, Sandra L. Uecker, Torrey K. Valencia, Kenneth E. Watje, Cynthia L. Wolfe, Sharon Slocum, and Steven Howell. Two of Teachers in this appeal, Slocum and Howell, were not among the original petitioners, but were added as parties before trial. And four other schoolteachers (Ruth Barraza, Cynthia J. Cardinale, Darrell A. Hendricks, Julie Minnis) were petitioners when the action was filed, but voluntarily withdrew from the proceedings before the entry of judgment.

teachers') monthly pension benefits. The miscalculation was based upon erroneous reporting to CalSTRS by the Salinas Unified High School District of the sixth-period earnings of high school teachers (including Teachers) for purposes of calculating retirement benefits. A 2010 CalSTRS audit disclosed this erroneous reporting as to 15 employees; although Teachers were not specifically identified, the audit included findings that it was likely that other employees were affected by the erroneous reporting.

At the trial below, Teachers contended, inter alia, that the statute of limitations barred CalSTRS's from recouping prior overpayments or from adjusting downward their future monthly pension benefits. They did not challenge the substantive conclusions of the CalSTRS audit. The trial court agreed with Teachers' position, and it entered judgment in Teachers' favor on July 10, 2017. CalSTRS appealed the judgment.

In the meantime, shortly after entry of judgment, Teachers filed a motion for award of attorney fees with the trial court. They based the motion on Code of Civil Procedure section 1021.5,² which codified the private attorney general doctrine, under which attorney fees may be awarded to plaintiffs in cases that involve the enforcement of rights affecting fundamental public policies. (See *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933.) The court granted the motion for attorney fees in the amount of \$453,900. The formal order was filed January 29, 2018. CalSTRS appealed that order.

On July 10, 2019, this court filed its opinion reversing the judgment of the trial court. (See *Blaser v. State Teachers' Retirement System* (2019) 37 Cal.App.5th 349 (*Blaser I*.) In our decision, as modified, we held that CalSTRS was not time-barred as to certain claims concerning periodic overpayments to Teachers and the adjustment of future monthly benefits, where the payment accrued not more than three years prior to

² All further statutory references are to the Code of Civil Procedure unless otherwise specified.

commencement of an action. (*Id.* at p. 355.) We remanded the case to the trial court for it to consider whether Teachers would be allowed to assert laches and/or estoppel as a defense to CalSTRS’s claims related to those overpayments that were not otherwise time-barred. (*Id.* at p. 379.) In light of the disposition of *Blaser I*, we will reverse the order awarding attorney fees.

I. DISCUSSION

A. Procedural Background

On February 1, 2016, Teachers filed a petition for writ of mandate and a complaint for declaratory and injunctive relief against CalSTRS and the District. Teachers challenged reductions that CalSTRS had made and continued to make to their monthly retirement benefits under their Defined Benefit Program accounts. In June 2017, after a trial, the superior court filed its intended decision granting Teachers’ petition for writ of mandate in *Blaser I*. The court concluded that CalSTRS was barred by the applicable statute of limitations under Education Code section 22008, subdivision (c) from reducing Teachers’ retirement benefits and from collecting prior overpayments made to them. The trial court also rejected CalSTRS’s contention that the continuous accrual theory (see *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185) applied to prevent CalSTRS from being entirely time-barred from asserting claims against Teachers. Under the continuous accrual theory, “a series of wrongs or injuries may be viewed as each triggering its own limitations period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period. [Citation.]” (*Id.* at p. 1192, fn. omitted.) On July 10, 2017, judgment was entered in favor of Teachers granting their petition for peremptory writ of mandate. CalSTRS filed an appeal from the judgment.

On September 26, 2017—while the appeal in *Blaser I* was pending—Teachers filed a motion for attorney fees in the trial court. Teachers asserted they were the prevailing parties in the action, and that they satisfied the three requirements of section

1021.5 for an award of attorney fees under the private attorney general doctrine. Citing *Baggett v. Gates* (1982) 32 Cal.3d 128, 142 (*Baggett*), Teachers urged that attorney fees were recoverable because, through their lawsuit, they had “(1) served to vindicate an important public right; (2) conferred a significant benefit on the general public or a large class of persons; and (3) imposed [*sic*] a financial burden on the plaintiff out of proportion to his/her individual stake in the matter.” Teachers sought a total of \$914,405.03 in attorney fees, based upon fees (using a standard hourly rate) of \$609,603.35, and applying a lodestar (or multiplier) of 1.5.

CalSTRS opposed the motion. It argued that Teachers had failed to establish the requirements of an award of attorney fees under section 1021.5. Specifically, CalSTRS asserted that Teachers had not enforced an important public right affecting the general public; it had only secured continued payment of retirement benefits to Teachers at a rate that was inflated due to a miscalculation. After a hearing conducted on December 6, 2017, the court granted the motion for attorney fees, awarding Teachers fees in the amount of \$453,900 to be paid by CalSTRS. The formal order was filed January 29, 2018.

CalSTRS appealed that attorney fee order. It contends that the trial court erred in granting attorney fees. They argue that there was no reasonable basis for the fee award, because Teachers had failed to meet their burden of showing that any of the three factors stated in *Bagget, supra*, 32 Cal.3d 128, was satisfied.

On July 10, 2019, after completion of briefing in connection with CalSTRS’s appeal of the attorney fee order, a panel of this court filed the opinion in *Blaser I*, reversing the superior court judgment. We held that the continuous accrual theory applied. We concluded: “CalSTRS was time-barred from pursuing any claim against Teachers as to pension benefit overpayments made more than three years before CalSTRS commenced an action. But CalSTRS is not barred by the statute of limitations from pursuing any claim concerning periodic overpayments to Teachers and adjustments

to Teachers' future monthly benefits, where the payment accrued not more than three years prior to commencement of an action.” (*Blaser I, supra*, 37 Cal.App.5th at p. 355.) We concluded further that CalSTRS had constructively initiated an “action” on February 1, 2016, for purposes of applying the continuous accrual theory to claims otherwise barred by the statute of limitations. This was the date that Teachers filed their petition for writ of mandamus and complaint in the superior court. (*Id.* at pp. 355-356.) We thus concluded: “CalSTRS may assert claims to recoup overpayments for past monthly payments accruing on or after February 1, 2013, and it may adjust future monthly payments to recoup prior overpayments (on benefit payments that accrued on or after February 1, 2013) and to correct the District’s prior miscalculation of monthly benefits going forward.” (*Id.* at p. 356.) We remanded the case to the trial court with directions that “[u]pon request, the trial court shall consider whether Teachers may assert laches and/or estoppel as a defense to claims by CalSTRS related to overpayments where such claims are not otherwise barred by the three-year statute of limitations. If, upon such request, the court concludes that Teachers may assert laches and/or estoppel, the court may then proceed to determine whether under such doctrine(s), CalSTRS is precluded from asserting claims related to overpayments not otherwise time-barred. If the court concludes that such doctrine(s) does/do apply, it shall enter a new a different judgment accordingly. If the court concludes that Petitioners may not assert laches and/or estoppel, or if it concludes that the doctrine(s) does not/do not apply, the court is directed to enter a new and different judgment” consistent with our opinion that, CalSTRS was entitled to assert claims to recoup overpayments for past monthly payments accruing on or after February 1, 2013, and it could adjust future monthly payments to recoup prior overpayments (on benefit payments that accrued on or after February 1, 2013) and to correct the District’s prior miscalculation of monthly benefits going forward. (*Id.* at p. 379.)

B. The Order Awarding Attorney Fees Must Be Reversed

It is established law that a postjudgment order awarding attorney fees to the prevailing party in the litigation “falls with a reversal of the judgment on which it is based.” (*Merced County Taxpayers’ Assn. v. Cardella* (1990) 218 Cal.App.3d 396, 402 (*Cardella*); see also *Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1053.) CalSTRS, citing *Cardella*, argued in its opening brief in this appeal that if this court were to reverse the judgment in *Blaser I*, the attorney fee award would necessarily require reversal. Teachers did not respond to this argument in their respondents’ brief. We therefore deem the matter submitted on appellant CalSTRS’s brief. (*Alameda County Management Employees Assn. v. Superior Court* (2011) 195 Cal.App.4th 325, 338-339.)

Plainly, our disposition in *Blaser I* reversing the judgment mandates reversal of the attorney fee order here. (*Cardella, supra*, 218 Cal.App.3d at p. 402.) After remand, there will be a new judgment entered below. The entry of a new judgment may spur the filing of a new motion for attorney fees under section 1021.5, and the resolution of legal issues relating to such motion would be based upon a set of facts different from those presented to the trial court in deciding the original attorney fee motion. Therefore, upon remand of the matter pursuant to this court’s holding in *Blaser I* and the court’s entry of a new judgment, it would be appropriate for the trial court to consider anew any postjudgment motions, including motions for attorney fees and costs. (See *Giles v. Horn* (2002) 100 Cal.App.4th 206, 242, fn. omitted [upon reversal of the judgment and remand, appellate court “leave[s] it to the trial court to determine if attorney fees should be awarded to plaintiffs under Code of Civil Procedure 1021.5”].)

II. DISPOSITION

The postjudgment order of January 29, 2018, granting Teachers’ motion for attorney fees is reversed. Each party shall bear his/her/its own respective costs on appeal.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

GREENWOOD, P.J.

DANNER, J.

Blaser et al. v. California State Teachers' Retirement System
H045727